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NOTICE OF ALLOWANCE AND FEE(S) DUE

20985 7590 08/31/2009

FISH & RICHARDSON, PC
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

EXAMINER

MIRZA, ADNAN M

ART UNIT

PAPER NUMBER

2445

DATE MAILED: 08/31/2009

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/840,067 | 05/05/2004 | Cary A. Jardin | 10559/255002/P8904C | 6651 |

TITLE OF INVENTION: SPEED SENSITIVE CONTENT DELIVERY IN A CLIENT-SERVER NETWORK

| APPLN. TYPE | SMALL ENTITY | ISSUE FEE DUE | PUBLICATION FEE DUE | PREV. PAID ISSUE FEE | TOTAL FEE(S) DUE | DATE DUE |
|----------------|--------------|---------------|---------------------|----------------------|------------------|------------|
| nonprovisional | NO | \$1510 | \$300 | \$0 | \$1810 | 11/30/2009 |

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. **PROSECUTION ON THE MERITS IS CLOSED.** THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN **THREE MONTHS** FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. **THIS STATUTORY PERIOD CANNOT BE EXTENDED.** SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: **Mail** **Mail Stop ISSUE FEE**
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INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

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Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

| |
|--------------------|
| (Depositor's name) |
| (Signature) |
| (Date) |

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/840,067 05/05/2004

Cary A. Jardin

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| EXAMINER | ART UNIT | CLASS-SUBCLASS |
|----------------|----------|----------------|
| MIRZA, ADNAN M | 2445 | 709-223000 |

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB-122) attached.

☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB-47; Rev 03-02 or more recent) attached. Use of a **Customer Number is required.**

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, 1 _____
- (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed. 2 _____
- 3 _____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

- ☐ Issue Fee
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- ☐ Advance Order - # of Copies _____

4b. Payment of Fee(s): (Please first reapply any previously paid issue fee shown above)

- ☐ A check is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

5. **Change in Entity Status** (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

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Typed or printed name _____ Registration No. _____

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. **DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.**

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EXAMINER

MIRZA, ADNAN M

ART UNIT

PAPER NUMBER

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Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 155 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 155 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

Notice of Allowability

Application No.

10/840,067

Examiner

ADNAN MIRZA

Applicant(s)

JARDIN ET AL.

Art Unit

2445

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 05/06/2009.
2. ☒ The allowed claim(s) is/are 1-3,5-15 and 17-21.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: ____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date ____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date ____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date ____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date ____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other ____.

/NIVEK SRIVASTAVA/
Supervisory Patent Examiner, Art Unit 2445

EXAMINER'S AMENDMENT

An Examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to applicants, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it must be submitted no later than the payment of the issue fee.

Authorization for this Examiner's Amendment was given in a telephone interview with Mr. Shun Yao on 08/05/09.

Please amend claims 1, 5, 6 and 11, cancel claims 4 & 16 and add new claims 17-21.

Listing of Claims

1. (Currently Amended) A method of enhancing data delivery comprising:
 - sending a first packet from a client interface to a remote terminal at a first time;
 - receiving at the client interface a second packet from the remote terminal at a second time;
 - determining a response time of the remote terminal at the client interface based on a time period between the first time and the second time;
 - using said response time to determine information related to a

26 connection speed between the remote terminal and the client interface;
27 receiving a request, from the remote terminal, for a content version
28 included in providing a plurality of different content versions, wherein each
29 having of the different content versions has a different amount of
30 information, each content version being and is optimized for a specific
31 connection speed;

32 upon determining that the requested content version is too large in
33 size for the remote terminal to provide based on said determined
34 connection speed, automatically selecting a content version, that is
35 different from a requested content version, from said plurality of content
36 versions; and

37 providing the remote terminal with the selected content version.

38

39 4. (Cancelled).

40

41 5. (Currently Amended) The method of claim 1, ~~further comprising~~
42 ~~selecting the content version in response to a request for a content~~
43 ~~version from the remote terminal,~~ wherein the selected content version is
44 ~~different from~~ smaller in size than a requested content version.

45

46 6. (Currently Amended) A method of connecting a remote terminal to
47 a server comprising:

48 determining a response time of a remote terminal at a client
49 interface based on a time period elapsing between a first packet being
50 sent from the client interface to the remote terminal and a second packet
51 being received from the remote terminal at the client interface;

52 using said response time to determine a connection speed between
53 the remote terminal and the client interface;

54 receiving a request from the remote terminal at the client interface
55 for a content version;

56 identifying a plurality of content versions at a server coupled to the
57 client interface, each content version having a different amount of
58 information at the server, each content version being optimized for a
59 specific connection speed;

60 determining, based on the connection speed between the remote
61 terminal and the client interface, that the requested content version is too
62 large in size for the remote terminal to provide;

63 based on said connection speed, automatically selecting an
64 alternative content version of the plurality of content versions, the
65 alternative content version smaller in size than the requested content
66 version; and

67 providing the selected alternative content version to the remote
68 terminal in response to the request.

69

70 11. (Currently Amended) An apparatus, including instructions residing
71 on a machine-readable storage medium, for use in a machine-based
72 system to handle a plurality of instructions, the instructions causing the
73 machine system to:

74 send a first packet from a client interface to the remote terminal;
75 receive at the client interface a second packet from the remote
76 terminal;

77 determine a response time of the remote terminal at the client
78 interface based on a time period between the first packet being sent and
79 the second packet being received;

80 use said response time to determine a connection speed between
81 the remote terminal and the client interface;

82 receive a request for a content version from the remote terminal at
83 the client interface;

84 determine, based on the determined connection speed, that the
85 requested content version is too large in size for the remote terminal to

86 provide;
87 access a plurality of content versions located at a server, each
88 content version having a different amount of content, and each content
89 version being optimized for a specific connection speed;
90 automatically select an alternative content version of the plurality of
91 content versions that the remote terminal can provide, based on the
92 determined connection speed; and
93 communicate the selected version from the server to the remote
94 terminal.
95
96 16. (Cancelled).
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98 17. (New) An apparatus, including instructions residing on a machine-
99 readable storage medium, for use in a machine-based system to handle a
100 plurality of instructions, the instructions causing the machine system to
101 perform operations comprising:
102 sending a first packet from a client interface to a remote terminal at
103 a first time;
104 receiving at the client interface a second packet from the remote
105 terminal at a second time;
106 determining a response time of the remote terminal at the client
107 interface based on a time period between the first time and the second
108 time;
109 using said response time to determine information related to a
110 connection speed between the remote terminal and the client interface;
111 receiving a request, from the remote terminal, for a content version
112 included in a plurality of different content versions, wherein each of the
113 different content versions has a different amount of information and is
114 optimized for a specific connection speed;
115 upon determining that the requested content version is too large in

116 size for the remote terminal to provide based on said determined
117 connection speed, automatically selecting a content version, that is
118 different from a requested content version, from said plurality of content
119 versions; and

120 providing the remote terminal with the selected content version.

121

122 18. (New) The apparatus of claim 17, the operations further comprising
123 determining a data flow rate from the determined response time of the
124 remote terminal, and wherein determining the response time comprises:

125 starting a timer at the first time when the client interface sends the
126 first packet to the remote terminal; and

127 stopping the timer at the second time when the client interface
128 receives the second acknowledgement packet from the remote terminal.

129

130 19. (New) The apparatus of claim 17, the operations further comprising
131 determining network congestion based on the determined response time.

132 20. (New) The apparatus of claim 17, the operations further comprising
133 determining the response time based on a timing of a handshake between
134 the remote terminal and the client interface.

135

136 21. (New) The apparatus of claim 17, wherein the selected content
137 version is smaller in size than the requested content version.

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Reasons for Allowance

1. Claims 1-3, 5-15, 17-21 will be allowed.

2. The following is an examiner's statement of reasons for allowance.

The prior art references most closely resembling the applicants claimed invention is TSO (U.S. 6,421,733) and Smith et al (U.S. 7,139,844).

First, Tso disclosed a system for dynamically transcoding data transmitted between computers is implemented in an apparatus for use in transmitting data between a network server and a network client over communication link. However Tso failed to disclose, "receiving a request, from the remote terminal, for a content version included in a plurality of different content versions, wherein each of the different content versions has a different amount of information, and is optimized for a specific connection speed; upon determining that the requested content version is too large in size for the remote terminal to provide based on said determined connection speed, automatically selecting a content version, that is different from a requested content version, from said plurality of content versions". These limitations are incorporated into all of the independent claims (claims 1, 6, 11, 17).

Second Smith disclosed a system for delivering data objects containing data subject to periodic updates to a plurality of clients is disclosed and which is

167 configured to at least one input data stream which carries a specific type of data
168 objects, such as objects related to financial product offerings and also establish a
169 communication session with various clients. However Smith failed to disclose
170 “receiving a request, from the remote terminal, for a content version
171 included in a plurality of different content versions, wherein each of the
172 different content versions has a different amount of information, and is
173 optimized for a specific connection speed;
174 upon determining that the requested content version is too large in size for
175 the remote terminal to provide based on said determined connection
176 speed, automatically selecting a content version, that is different from a
177 requested content version, from said plurality of content versions”. These
178 limitations are incorporated into all of the independent claims (claims 1, 6, 11,
179 17).

In summary, the Examiner submits that Tso and Smith taught all the limitations of independent claims in combination with other elements. Specifically prior art does not teach “receiving a request, from the remote terminal, for a content version included in a plurality of different content versions, wherein each of the different content versions has a different amount of information, and is optimized for a specific connection speed; upon determining that the requested content version is too large in size for the remote terminal to provide based on said determined connection speed, automatically selecting a content version, that is different from a requested content version, from said plurality of content versions”; therefore, claims 1-3, 5-15, 17-21 have been deemed allowable over the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adnan Mirza whose telephone number is (571) 272-3885. The examiner can normally be reached on Monday through Friday from 9:30 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Vivek Srivastava can be reached on (571)-272-7304. The fax phone numbers for the organization where this application or proceeding is assigned are listed herein below.

Art Unit: 2445

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703)746-7239.

Customer service number is (866) 217-9197.

/VIVEK SRIVASTAVA/

Supervisory Patent Examiner, Art Unit 2445